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May 17, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
MAY 17 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 93-107
Channel 280A
Westerville, Ohio

Dear Ms. Searcy:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and six (6) copies of its "Motion to Enlarge Issues Against Ringer."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: _____
John W. Hunter

By: _____
Stephen T. Yelverton

Enclosure

B:SEARCY52.FCC

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of:	)	
	)	
DAVID A. RINGER	)	MM Docket No. 93-107
	)	
et al.,	)	File Nos. BPH-911230MA
	)	
Applications for Construction Permit for a New FM Station, Channel 280A, Westerville, Ohio	)	through
	)	
	)	BPH-911231MB
	)	

To: Administrative Law Judge
Walter C. Miller

MOTION TO ENLARGE ISSUES AGAINST RINGER

Respectfully submitted,

MCNAIR & SANFORD, P.A.

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John W. Hunter

By:_____
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May 17, 1993

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MOTION TO ENLARGE ISSUES AGAINST RINGER

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 1.229 (b)(1) of the Commission's Rules, hereby submits this motion to enlarge the issues against David A. Ringer ("Ringer"). This motion is based on information in the application of Ringer and other pre-designation matters and thus is timely filed within thirty (30) days of the release of the hearing designation order on April 15, 1993. See, DA 93-423. In support of its motion to enlarge the issues, ORA submits the following comments.

Section 73.215 Violation

Ringer proposes the use of a directional antenna and requests processing pursuant to Section 73.215. Sub-section (b)(2)(ii) of that provision requires that an applicant, such as Ringer, which desires to take advantage of directionalization, even if not requesting Section 73.215 processing, must protect an affected short-spaced station's contours based on that station's maximum effective radiated power and not on its actual contours. See, On the Beach Broadcasting, FCC 93-211, para. 10, released May 10, 1993. The application of Ringer fails to state that it will provide this required protection to affected short-spaced stations and, in particular, to Station WTTF-FM, Tiffin, Ohio. Moreover, Ringer concedes in his application that in spite of the use of a directional antenna there will be contour overlap with Station WTTF-FM. See, attachment 1, p. 2.

Accordingly, the Presiding Judge is requested to specify the following issue:

> To determine whether the application of David A. Ringer violates Section 73.215 of the Commission's Rules, and if so whether he is basically qualified to be a Commission licensee, and thus whether his application should be granted?

If this issue is specified, ORA requests the production of all documents relating to the preparation of the directional antenna portion of Ringer's application.

Short-Spacing Issue

The application of Ringer indicates that his proposed tower site is 6.84 km. short-spaced, under Section 73.207, to Station WTTF-FM, Tiffin, Ohio. Under long-established Commission policy, when an applicant in a comparative hearing

is short-spaced, a hearing issue must be specified as to that applicant's basic qualifications. Jemez Mountain Broadcasters, 7 FCC Rcd 4219, 4220, paras. 2 and 12 (1992); Payne Communications, Inc., 1 FCC Rcd 1052, 1053, paras. 6, 9-10 (Rev. Bd. 1986), aff'd, Evergreen Broadcasting Co., 6 FCC Rcd 5599, 5605, n. 3 (1991); Naguabo Broadcasting Co., 6 FCC Rcd 4879, para. 5 (1991); Madalina Broadcasting,

way eviscerate the spacing requirements of Section 73.207, or the necessity to show the unavailability of fully-spaced sites. See, para. 27, supra, which explicitly states that a short-spaced tower site can be used only when a fully-spaced site is unavailable. Moreover, both of these provisions specifically state that a public interest showing must be made in order to obtain a grant.

Accordingly, the Presiding Judge is requested to specify the following issue:

> To determine whether the application of David A. Ringer proposes a tower site in violation of Section 73.207 of the Commission's Rules, and if so whether the use of a directional antenna pursuant to Section 73.213 or 73.215 of the Rules would be in the public interest and whether he is basically qualified to be a Commission licensee, and thus whether his application should be granted?

2.0 ALLOCATION CONSIDERATIONS

Channel 280 is allotted to Westerville, Ohio, in Section 73.202(b) of the FCC Rules as a Class A facility. Table 2.0 is an FM allocation study showing the actual and required separations under 73.207 of the FCC Rules between the proposed facility and any applicable existing or proposed stations or allotments. It should be noted that the coordinates for the proposed facility are also the coordinates for the Westerville allotment. As shown by this table, the proposed facility will be short spaced to one station under the spacing requirements outlined in Section 73.207 of the FCC Rules:

WTTF-FM Tiffin, OH Channel 279B

This short spacing is permissible under Section 73.215 of the FCC Rules provided the necessary contour protection is employed. It should be noted that the proposed short spacing complies with the table in Section 73.215(e) of the FCC Rules which specifies the minimum separation at which contour protection may be employed. Furthermore, as a Class A station proposing facilities in excess of 3 kW at 100 meters above average terrain, or equivalent, the proposed facility is exempt from the note in this rule section which temporarily limits the amount of short spacing which will be permitted to 8 kilometers. Since WTTF-FM operates on a first adjacent channel to the proposed facilities, Section 73.215 of the FCC Rules states that there can be no overlay between the 54 dBu, 50% contour of WTTF-FM and the 48 dBu, 10% contour for the proposed facilities. Furthermore, there can be no overlap of the 60 dBu, 50% contour for the proposed facilities and the 54 dBu, 10% contour of WTTF-FM. As outlined in Section 73.215(b) of the FCC Rules, the contour projections for WTTF-FM assume operation with an omnidirectional effective radiated power of 50 kW at 150 meters above average terrain, the maximum facilities permitted for a Class B station. Terrain data from the NGDC 30 second terrain data base was utilized in projecting the contours for WTTF-FM. Tables 2.1(a) and 2.1(b)

present the projections of the appropriate contours for WTTF-FM, assuming an antenna height of 383 meters above mean sea level. Tables 2.2(a) and 2.2(b) present the contour projections for the facilities proposed herein. These contour projections are based upon the actual proposed operating facilities, including the directional antenna pattern detailed in Section 3.0 of this exhibit. Terrain data used in projecting these contours was extracted from the NGDC 30 second terrain database. Figure 2.0 shows all of these contours on an appropriate map base. As shown by this figure, a small amount of overlap will occur between the 48 dBu, 10% contour for the proposed facilities and the 54 dBu, 50% contour of WTTF-FM.

It should again be noted that the facilities proposed herein specify operation from a transmitter site whose coordinates are also the allotment coordinates for Channel 280A in Westerville, Ohio. Furthermore, the separation between the site specified herein and WTTF presently complies with Section 73.213(c)(1) of the FCC Rules, thus permitting the facilities proposed herein to operate with a omnidirectional effective radiated power of 3 kilowatts at 100 meters above average terrain, or equivalent, in the arc toward WTTF. As shown in Section 3.0, the proposed directional pattern restricts the effective radiated power in this arc to the equivalent of 3 kW at 100 meters above average terrain. Thus, the facilities proposed herein fully comply with Section 73.213(c)(1) of the FCC Rules as well as with the May 30, 1991 Memorandum Opinion and Order in MM Docket 88-375 regarding short spaced Class A stations desiring to improve their facilities when prohibited contour overlap would presently exist. It should not, therefore, be necessary to obtain a waiver of Section 73.215 of the FCC Rules with regard to the overlap between the proposed facilities and WTTF-FM described above. If it is deemed to be necessary, however, a waiver of Section 73.215 of the FCC Rules is respectfully requested.

10. Is a directional antenna proposed? [X] Yes [ ] No

If Yes, attach as an Exhibit a statement with all data specified in 47 C.F.R. Section 73.316, including plot(s) and tabulations of the relative field. Exhibit No. E-1

11. Will the proposed facility satisfy the requirements of 47 C.F.R. Sections 73.315(a) and (b)? [X] Yes [ ] No

If No, attach as an Exhibit a request for waiver and justification therefor, including amounts and percentages of population and area that will not receive 3.16 mV/m service. Exhibit No. N/A

12. Will the main studio be within the protected 3.16 mV/m field strength contour of this proposal? [X] Yes [ ] No

If No, attach as an Exhibit justification pursuant to 47 C.F.R. Section 73.1125. Exhibit No. N/A

13. (a) Does the proposed facility satisfy the requirements of 47 C.F.R. Section 73.207? [ ] Yes [X] No

(b) If the answer to (a) is No, does 47 C.F.R. Section 73.213 apply? [X] Yes [ ] No

(c) If the answer to (b) is Yes, attach as an Exhibit a justification, including a summary of previous waivers. Exhibit No. E-1

(d) If the answer to (a) is No and the answer to (b) is No, attach as an Exhibit a statement describing the short spacing(s) and how it or they arose. Exhibit No. N/A

(e) If authorization pursuant to 47 C.F.R. Section 73.215 is requested, attach as an Exhibit a complete engineering study to establish the lack of prohibited overlap of contours involving affected stations. The engineering study must include the following: Exhibit No. E-1

(1) Protected and interfering contours, in all directions (360°), for the proposed operation.
(2) Protected and interfering contours, over pertinent arcs, of all short-spaced assignments,

CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 17th day of May, 1993, I have caused to be

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